



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

MAR 2 1988

REPLY TO THE ATTENTION OF:

146448

Les Drage, President
Les Drage Realty Co.
405 Broad Street
Elyria, Ohio 44035

RE: Harshaw/Filitrol Corp. Plans Concerning Former
Chemical Recovery Property

Dear Mr. Drage:

This is in response to your correspondence concerning sale by Mr. and Mrs. Russell Obitts of several acres of property formerly occupied and used by Chemical Recovery Systems, Inc., to Harshaw/Filitrol for use as a parking area.

As you know, this site was the subject of a lawsuit by the U.S. EPA under the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. §6901 et seq., and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1985 (CERCLA), 42 U.S.C. §9601 et seq. The basis of the litigation involved contamination of the site by a variety of hazardous substances and hazardous wastes during Chem Recovery's operations and occupancy. This litigation was resolved by a Consent Decree filed in the Northern District of Ohio. You have alluded to provisions of that Decree in your correspondence, and thus are aware of its terms.

In our discussions on this matter, I have explained to you the process that the U.S. Environmental Protection Agency (U.S. EPA) normally follows in dealing with such sites, under the statutes and regulations that now control the so-called Superfund program. If a site is suspected of causing or contributing to a release or threat of release of hazardous substances, the EPA or a state agency will evaluate the site and, if it achieves a high enough score under a Congressionally-mandated review process, it will be placed on the National Priorities List (NPL) of sites to be

cleaned up using the EPA's remedial action authority. After a detailed investigation and any final cleanup of the site, and subsequent periodic review to insure that the remedial work in fact cleaned up the contamination, the site can be removed from the NPL and should require no further attention from EPA.

If the site poses an imminent and substantial endangerment to human health or the environment, even if it does not score high enough to get on the NPL, it may be the subject of EPA action to remove hazardous substances causing or contributing to the endangerment and/or stabilize the site.

In either event, Congress has established principles governing the liability of owners and operators of the site, which are set forth in Section 107 of CERCLA, 42 U.S.C. 9607. The site in question was never reviewed for inclusion on the NPL, nor was it the subject of studies that would determine all areas of contamination and any necessary remedial work. The Chem Recovery site was one of the first that was the subject of litigation under the Superfund program, and the Decree that resolved the liability of the defendants in that action was concluded at an early stage in the development of that program.

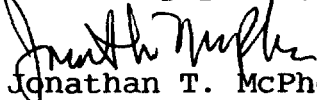
While the cleanup that took place no doubt removed much of the hazardous substances that were located at the site, the U.S. EPA cannot be sure that complete cleanup was achieved, due to the lack of complete information about areas and extent of contamination. The sampling that Chem Recovery did in the river was a surrogate intended to show if clear and substantial evidence of releases to the river continued to be manifested. It did not and could not demonstrate that the site had been cleaned up to standards that would satisfy the final requirements for remedial action at that site. Please remember that only "visibly contaminated" soils were removed from the site. Soils and groundwater can be contaminated even though not visibly so.

Under CERCLA's liability provisions, both past and present owners of sites from which there is a release or threat of release of hazardous substances may be liable for cleanup costs or subject to an order, either administrative or judicial, requiring cleanup activities. The Consent Decree resolves, in large measure, the liability of the past owners. As to a present owner, however, if it were determined that a release or threat of release existed at the site that was sufficient to list the site on the NPL, or that there was an imminent and substantial endangerment to human health or the environment, the present site owners would be "potentially responsible parties" or PRPs who might be liable under CERCLA.

We have no present evidence that the Chem Recovery site continues to release hazardous substances or to pose a threat of such a release. Paving the several acres would, as you indicate, tend to reduce infiltration of precipitation that might encourage migration of remaining hazardous substances. Because of the history of this site and the litigation, and the lack of the kind of studies that might give the EPA comfort that the site is no longer of concern, we are in no position to release the present owners from liability, or to assure them that there is no possibility that the EPA will not pursue further remedial action at the facility. I can state that we have no intention at present to pursue further action, or to reopen the Decree or seek further judicial relief regarding the site.

I am sorry that I cannot provide the kind of assurances you sought in your letter of November 27, 1987, that the EPA will not seek further work at the site. As indicated, we do not have any indication that such work is necessary at present, but since the Superfund process that would now apply if it did become apparent that further cleanup was warranted has not been satisfied, we cannot state categorically that the site is no longer of concern.

Sincerely yours,



Jonathan T. McPhee
Assistant Regional Counsel

cc: Erin Moran
Katherine Sutula